



Image
1771

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:) ATTY'S DKT: SCHULZ2
)
SCHULZ, Wolfgang)
)
Appln. No.: 09/826,369)
) Washington, D.C.
Filed: April 5, 2001)
) March 23, 2004
For: AWNING FABRIC AND...)
) Attn: PETITIONS

PETITION TO VACATE HOLDING OF ABANDONMENT¹

U.S. Patent and Trademark Office
2011 South Clark Place
Customer Window, Mail Stop
Crystal Plaza Two, Lobby, Room 1B03
Arlington, Virginia 22202

Sir:

Applicant is in receipt of the Notice of Abandonment, mailed March 11, 2003, which **erroneously** states that the application is abandoned because of applicant's failure to file a response within the time period established by the Office Action mailed December 11, 2003. The Office Action of December 11, 2003, was an Advisory Action, and Applicant timely filed a Notice of Appeal on January 2, 2004, within the statutory term established by the Final Action of September 9, 2003.

¹ If a fee must be charged, please charge same to Deposit Account No. 02-4035, and then refund said fee as the holding of abandonment is erroneous and is entirely the fault of the PTO.

It is respectfully requested that such Notice of Abandonment be vacated as being erroneous and that the present application be reinstated.

THE FACTS

Applicant timely and properly responded within the time period established by the Final Office Action dated September 9, 2003, by timely filing a Notice of Appeal on January 2, 2004, and an Appeal Brief was then filed on March 2, 2004.

As evidence that such Notice of Appeal and subsequent Appeal Brief were timely and properly filed on January 2, 2004, and March 2, 2004, respectively, attached hereto are xerographic copies of the return postcards date-stamped by the PTO Mail Room as having been timely received by the PTO on January 2, 2004, and March 2, 2004, respectively.

As it appears that the Notice of Appeal filed on January 2, 2004, has been lost by and in the PTO, attached hereto are duplicate signed copies of the documents (entitled "Notice of Appeal") dated January 2, 2004. **However, as the fees have already been paid, this executed copy is not to be taken as authorization to charge said extension of time fee. No further fees are required at this time.**

REMARKS

In view of the above evidence, it is clear that the Notice of Appeal and Appeal Brief were timely and properly filed within the time period established by the Final Office Action mailed on September 9, 2003, and that the Notice of Abandonment has been issued in error. Indeed, the postcards by themselves should be sufficient, as MPEP Section 503 states:

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt of the PTO of all items listed there on the date stamped thereon by the PTO.

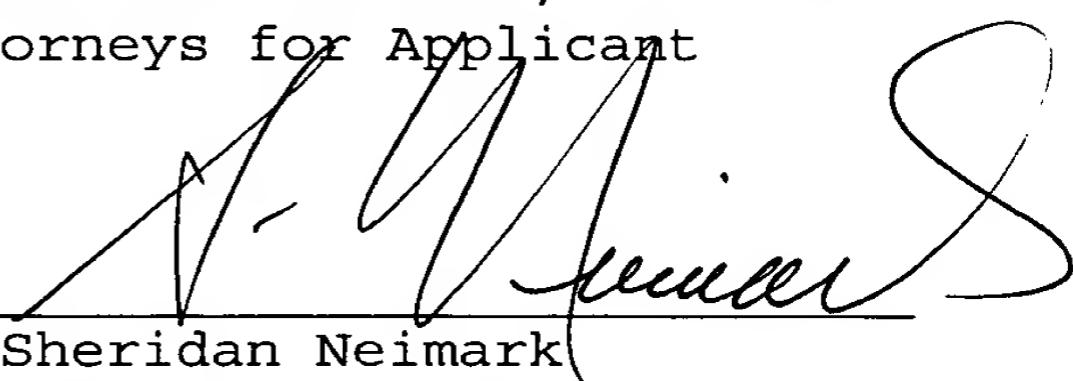
It accordingly requested that the Notice of Abandonment be vacated and the present application be reinstated.

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant

By

Sheridan Neimark

Registration No. 20,520



SN:edg

Telephone No.: (202) 628-5197

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re Application of:

Wolfgang SCHULZ

Appln. No.: 09/826,369

Filed: April 5, 2001

For: AWNING FABRIC AND PROCESS...

ATTY.'S DOCKET: SCHULZ=2

Conf. No.: 4003

Art Unit: 1771

Examiner: C.C. Pratt

Washington, D.C.

January 2, 2004

**NOTICE OF APPEAL FROM THE PRIMARY EXAMINER
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Honorable Commissioner for Patents
U.S. Patent and Trademark Office
2011 South Clark Place
Customer Window, Mail Stop AF
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Sir:

Applicant hereby appeals to the Board of Patent Appeals and Interferences from the final rejection (or the rejection of claims for at least the second time), dated September 9, 2003, of the Primary Examiner. The claims appealed are claims 1-7 and 9-15.

The item(s) checked below are appropriate:

XXX Small Entity Status: Applicant(s) claim small entity status. See 37 CFR 1.27.

XXX The fee has been calculated as shown below:

 \$330.00

XXX \$165.00 (small entity)

 Not required (fee paid in prior appeal)

XXX Applicant hereby petitions for an extension of time in accordance with 37 CFR 1.136(a). The appropriate fee required by 37 CFR 1.17 is calculated as shown below:

Small Entity

Response Filed Within

[X]	First	-	\$ 55.00
[]	Second	-	\$210.00
[]	Third	-	\$475.00
[]	Fourth	-	\$740.00

month after time period set

Other Than Small Entity

Response Filed Within

[]	First	-	\$ 110.00
[]	Second	-	\$420.00
[]	Third	-	\$ 950.00
[]	Fourth	-	\$1480.00

month after time period set

[] Less fees (\$) already paid for months extension of time on .

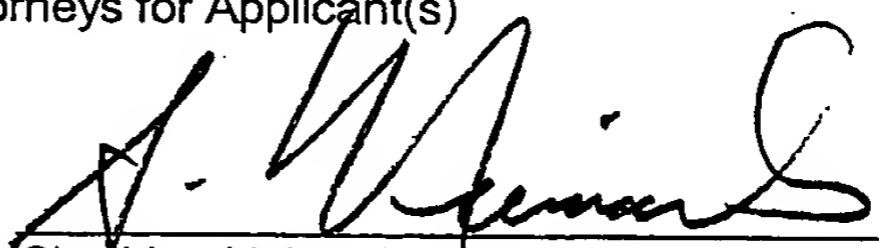
 A check in the amount of \$ is attached. (Check No.)

XXX Credit Card Payment Form, PTO-2038, is attached, authorizing the amount of \$ 220.00.

XXX Please charge any deficit in the fee paid herewith to my Deposit Account No. 02-4035.

Respectfully submitted,
BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant(s)

By:


Sheridan Neimark
Registration No. 20,520

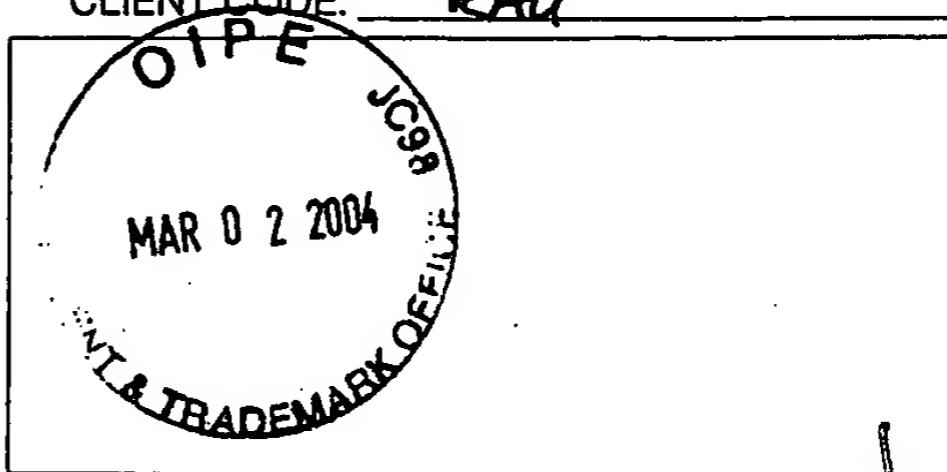


APPLICATION/PATENT NO: 09/826,369
DOCKET NO: SCHULZ-2

THE PATENT AND TRADEMARK OFFICE STAMP
HEREON ACKNOWLEDGES RECEIPT OF THE
FOLLOWING PAPERS:

FEES \$ 165.00
 PTO FORM 2038 (CH. # _____)
 EXTENSION OF TIME (_____ MONTHS)
 TRANSMITTAL LETTER
 MISSING PARTS RESPONSE WITH DECL
 AMENDMENT/RESPONSE (circle one)
 PRELIMINARY SUPPLEMENTAL
 APPLICATION DATA SHEET
 RESTRICTION/ELECTION REPLY
 SEQUENCE LISTING WITH DISK
 RCE TRANSMITTAL
 NOTICE OF APPEAL
 APPEAL BRIEF (TRIPPLICATE)
 REPLY BRIEF (TRIPPLICATE)
 OTHER _____

CONF. NO.: 4003
CLIENT CODE: RAU



ASSIGNMENT
 INFORMATION DISCLOSURE STATEMENT
 FORM SB08A & _____ PATENTS/PUBS
 PRIORITY DOCUMENT(S) NO. _____
 DECLARATION UNDER § _____
 _____ SHEETS OF FORMAL DRAWINGS
 ISSUE FEE TRANSMITTAL FORM
 PUBLICATION FEE
 MAINTENANCE FEE LETTER

B&N-1